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October 6, 2021

**VIA CM/ECF**

Honorable Mary Kay Vyskocil  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 2230  
New York, NY 10007

Re: *Goureau, et al. v. Lemonis, et al.*; Case No. 1:20-cv-04691-MKV  
Response to Plaintiffs' October 5, 2021 letter-motion

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Honorable Judge Vyskocil:

We represent Defendants Marcus Lemonis, ML Retail, LLC, and Marcus Lemonis, LLC (collectively, "ML Defendants"), in the above-referenced action brought by Nicolas Goureau and Stephanie Menkin (collectively, "Plaintiffs") against ML Defendants and Machete Corporation ("Machete") (collectively, "Defendants"). Plaintiffs' October 5, 2021 letter-motion (Dkt. No. 85) seeks a new schedule for briefing on Plaintiffs' proposed, but as of yet unfiled, motion for leave to file a new second amended complaint. Plaintiffs did not confer with ML Defendants about their proposed new schedule and, as a result, did not report to the Court ML Defendants' position on the application, which Plaintiffs believe is a violation of Your Honor's Individual Rules of Practice in Civil Cases. We respectfully submit this letter to advise the Court that ML Defendants oppose Plaintiffs' requested new schedule.

On August 27, 2021, more than eight months after Defendants' motions to dismiss had been fully briefed, Plaintiffs belatedly filed a motion for leave to file a second amended complaint. *See* Dkt. No. 69. They did so following a decision from Judge J. Paul Oetken in a separate action brought by other "The Profit" participants, which dismissed claims similar to certain of Plaintiffs' claims here. Dkt. Nos. 61, 65. On August 31 and September 1, 2021, the Court approved the parties' proposed briefing schedule for the motion for leave, with Defendants' oppositions due October 18, 2021. Dkt. Nos. 72, 76.

On September 2, 2021, the Court granted in part Defendants' motions to dismiss and directed that Plaintiffs advise on or before October 5, 2021 whether they intended to rely on their existing motion for leave to file a second amended complaint, or whether they intended to file a new, superseding motion for leave. Dkt. No. 77 at 12-13. The Court directed Defendants to respond to Plaintiffs' October 5 filing by October 18, 2021.



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In the meantime, on September 16, 2021, Plaintiffs filed a motion for reconsideration of the Court's September 2, 2021 Order. Dkt. No. 79. On September 20, 2021, the Court approved the parties' proposed briefing schedule for that reconsideration motion, with oppositions due October 25, 2021 and Plaintiffs' reply due November 1, 2021. Dkt. No. 84.

On October 5, Plaintiffs filed their letter-motion seeking to adjourn the current schedule for their motion for leave, and to permit Plaintiffs to delay in filing their new motion for leave until some unspecified time following the Court's decision on the motion for reconsideration. Dkt. No. 85.

ML Defendants respectfully request that the Court deny Plaintiffs' requested schedule for their new motion for leave to amend. Plaintiffs apparently intend to seek leave to further amend their complaint regardless of the outcome of the motion for reconsideration, so there is no reason to delay pending the outcome of the reconsideration motion. Briefing the two motions together would also promote efficiency and judicial economy by allowing the Court to decide all of the issues at once. Under Plaintiffs' proposal, the Court would decide the motion for reconsideration only to have it followed by the new motion for leave, which could potentially lead to months of delay.

ML Defendants propose that Plaintiffs be required to file their new, superseding motion by **Tuesday, October 12**. If Plaintiffs file a new, superseding motion on October 12, ML Defendants further propose that opposition briefs be due **October 25, 2021** and Plaintiffs' reply be due **November 1, 2021** so that the briefing matches up with the briefing on the motion for reconsideration. That way, both motions would be fully briefed and ready for the Court's consideration on November 1, 2021.

Respectfully submitted,

SEYFARTH SHAW LLP

*/s/ Jesse M. Coleman*

Jesse M. Coleman

JMC

cc: Counsel of record (via ECF)